



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING
3430 Courthouse Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350

Marsha S. McLaughlin, Director

www.howardcountymd.gov

FAX 410-313-3467

TDD 410-313-2323

December 29, 2008

TECHNICAL STAFF REPORT

Petition Accepted on October 3, 2008

Planning Board Meeting of January 15, 2009 (Advisory Authority Rules)

Zoning Board Hearing to be scheduled

Case No./Petitioner: ZB 1075M – Music Fair Road Limited Partnership

Location: First Election District
Southeast side of US 1 approximately 400 feet northeast of Montevideo Road
Tax Map 43, Grids 4 & 10, Parcel 32; 7615 US 1 (Washington Boulevard) (the "Property" or "Site").

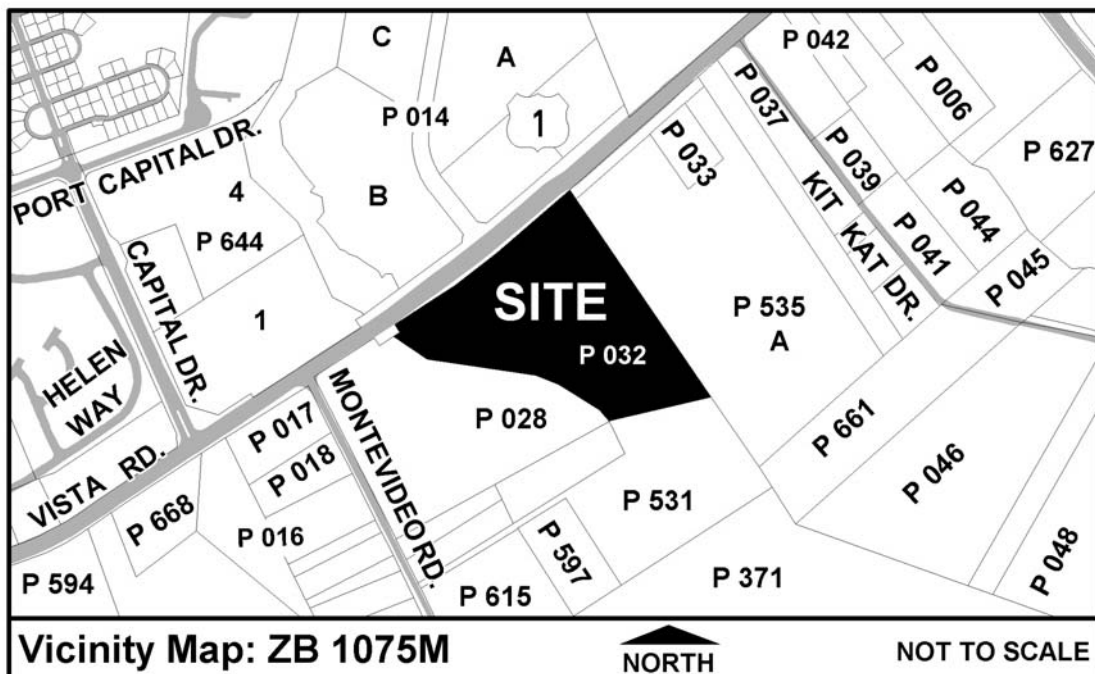
Area of Site: 11.733 acres

Current Zoning of Site: CE-CLI (Corridor Employment - Continuing Light Industrial Overlay)

Proposed Zoning of Site: POR (Planned Office Research)

Department of Planning and Zoning Recommendation:

APPROVAL



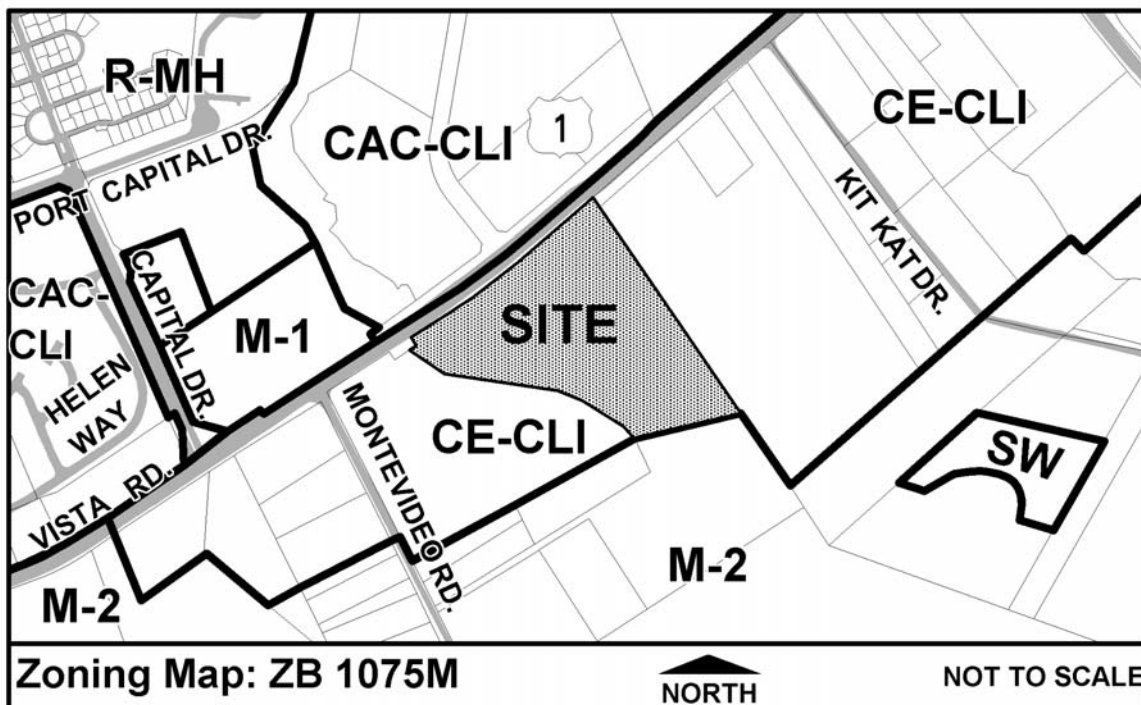
I. DESCRIPTION OF PROPOSAL

- **The Petitioner requests a Zoning Map Amendment to rezone the Property from the current CE-CLI (Corridor Employment - Continuing Light Industrial Overlay) District to the POR (Planned Office Research) District.**
- **The Petitioner alleges that the current CE-CLI zoning for the Property is a mistake, and the initial justification given for this allegation is "...that the County Council failed to provide for land sufficient to permit nursing homes and residential care facilities in the Route 1 corridor".**

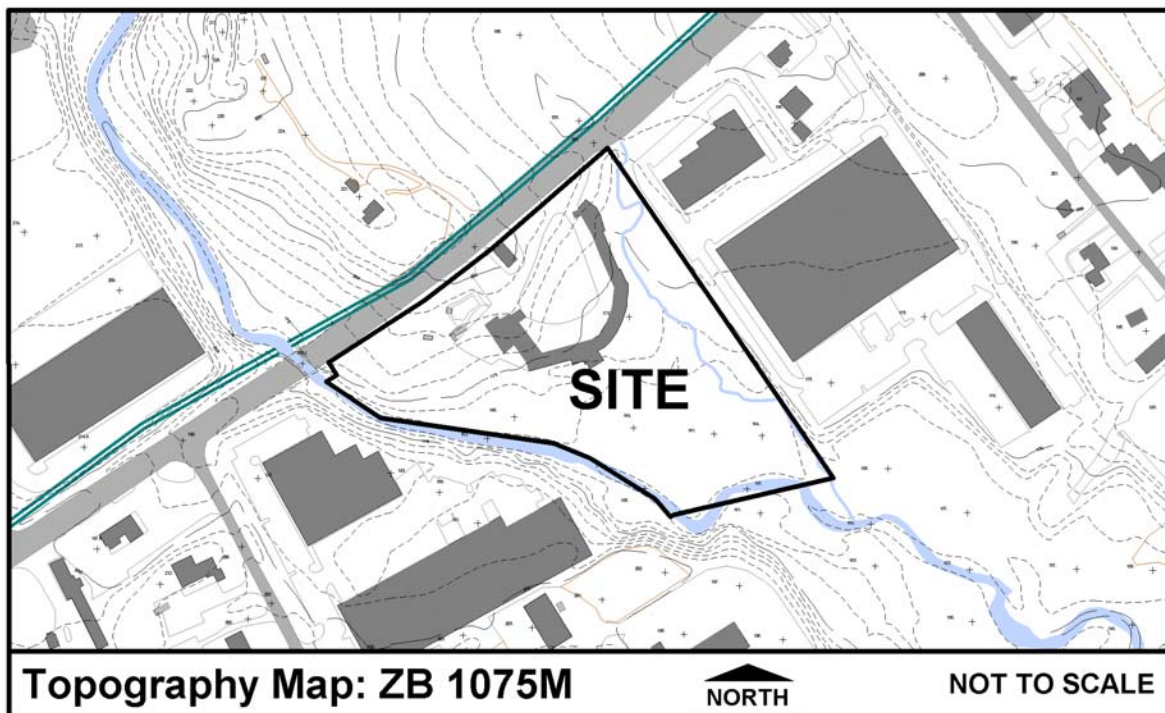
The Petitioner states that the omission by the County Council to provide for nursing homes and residential care facilities in the Route 1 Corridor was a mistake because it failed to accommodate a trend that existed at the time of the 2004 Comprehensive Zoning Plan ("CZP") in planning for the aging population.

- **The request for a Zoning Map Amendment also includes an allegation of substantial change in the character of the neighborhood since the CZP as a rationale to support the proposed POR District for the Property.**

The Petitioner cites Zoning Board case No. 1055M in which the zoning for the approximately 76 acre Blue Stream property located directly across Route 1 from the subject Property was changed from B-1 and M-1 to CAC-CLI in May, 2006 to support the allegation of change. Howard Square (formerly Aladdin Village Mobile Home Park) on the west side of Route 1 south of Port Capital Drive, and Mission Place on the west side of Route 1 at Mission Road are other developments exemplified by the Petitioner as justification for the requested rezoning on the basis of change.



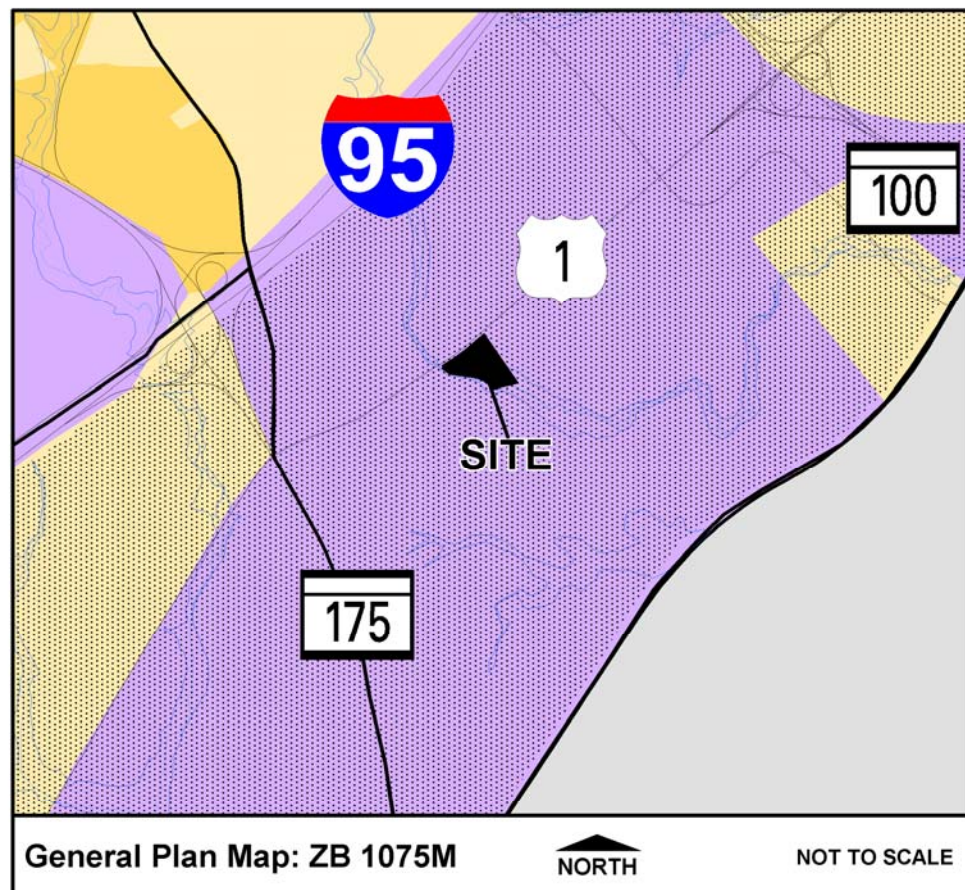
- The Petitioner also justifies the rezoning of the Property to a zone different than its neighboring properties on the basis of the presence of surrounding environmental features. The Petitioner notes that the Property is bordered on three sides by streams, wetlands and floodplain and it is therefore distinct and separate from neighboring parcels such that the proposed rezoning is appropriate.
- The Petitioner defines the neighborhood boundaries as being bounded by I-95 to the west, Route 100 to the north, Route 175 to the south, and east to the Anne Arundel County line.
- The neighborhood boundaries that are relevant to this Zoning Map Amendment request, as proposed by the Department of Planning and Zoning, are depicted on the map on Page 5 of this Technical Staff Report.
- This Zoning Map Amendment request is made under the Section 100.G.2. regulations for cases with site plan documentation. The proposed documented site plan, entitled “Lorien-Elkridge Nursing Home with Assisted Living” (the “Proposed DSP”) shows one, four-story building with a total of approximately 85,246 square feet and an open courtyard in the center. A phased building extension is depicted on the southeast side (rear) of the building. The proposed use would be for a 93 bed nursing home with assisted living facility according to the DSP notation within the building footprint. The parking tabulation indicates that there would potentially be 164 beds within the facility as well as a 5,000 square foot medical clinic.



The building would be setback approximately 18 feet from the US 1 right-of-way. The main building entrance would be oriented toward the southwest and a drop-off/pick-up area with a canopy would serve this entrance. A loading area would be located on the northeast side of the building.

Access to the Site would be via a two-way, 30 foot wide driveway opposite Blue Stream Drive. This driveway would lead to the main entrance and two parking areas on the southwest side and rear of the building. The drive aisle would continue to the loading area on the northeast side of the building. There would be one truck turnaround area on the north end of this drive aisle and one at the southern end of the parking area. Storm water management facilities would be underground. A retaining wall is shown on the DSP at the rear of the parking lot. This wall wraps to the southwest side of the parking lot and is shown as having a maximum height of approximately 12 feet. A retaining wall is also shown at the rear of the truck turnaround stall at the southern end of the parking lot. This wall continues to the easterly side of the lot adjacent to the stream buffer and is shown as having a maximum height of approximately 11 feet.

As noted on the DSP, an approved variance from the Zoning Regulations would be necessary for the encroachment of the building into the 30 foot setback from US 1 required in the POR District. The DSP acknowledges that waivers to the Subdivision and Land Development Regulations will be required for the depicted environment encroachments at the site development plan stage.

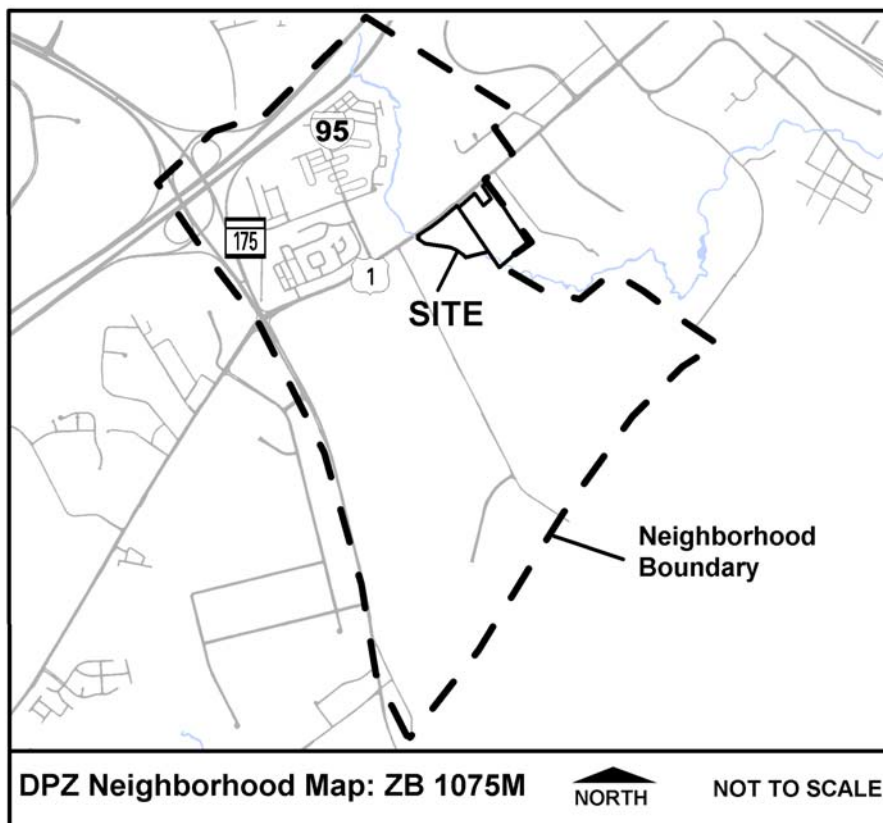


- **The Site is bordered on three sides by a stream, wetlands and floodplain. These environmental features and associated buffers encumber a significant portion of the Property (4.9 acres of the 11.7 acre Site is shown as floodplain in the DSP Tabulation). The development on the Site would be concentrated toward the front central area, and the developed portion including the building, parking, drive aisles, retaining walls and grading would be limited to a distance of approximately 375 feet from the US 1 right-of-way.**

On the southwest side of the Site, a more or less triangular area with approximately 330 feet of frontage along US 1 and running to approximately the edge of the parking lot is proposed to retain its current CE-CLI zoning classification, and is excluded from the request to rezone the Property to POR according to the DSP. The Petitioner has not specified the acreage or the meets and bounds of this excluded area, however.

- **The Site Analysis Data/Tabulation shown on the DSP indicates that there would potentially be 164 beds within the facility as well as a 5,000 square foot medical clinic.**

Section 133.D.7.f. requires one parking space per two beds for nursing homes and residential care facilities. Based on the tabulation, there would be 126 beds in the nursing home with a potential expansion of 38 additional beds for a potential total of 164 beds and 82 required parking spaces. Section 133.D.3.b. requires five parking spaces per 1,000 square feet for the medical clinic; therefore 25 parking spaces would be required for this use. A total of 107 spaces would be required for the uses, and 121 spaces have been provided.



II. ZONING HISTORY

A. Subject Property

- The Property was zoned M-2 by the 1977 CZP. This zoning was retained in 1985 and 1993 Comprehensive Zoning Plans.
- The Property was rezoned CE-CLI by the 2004 CZP.

B. Adjacent Properties

South side of US 1:

- In the 1977 CZP, properties between MD 175 to the southwest and Meadowridge Road to the northeast were zoned M-2. This zoning was retained in the 1985 and 1993 Comprehensive Zoning Plans.
- In the 2004 CZP properties between Montevideo Road and Brookdale Road (to the northeast) with frontage on US 1 to a depth of approximately 1,300 to 1,600 feet from US 1 were zoned CE-CLI.

North side of US 1:

- In the 1977 CZP, properties on the north side of US 1 directly across from the Property and to the northeast (to Cemetery Lane and beyond) were zoned M-1. This zoning was retained in the 1985 and 1993 Comprehensive Zoning Plans.
- The Howard Square site to the southwest of the Blue Stream property was zoned R-MH/B-1 in the 1977 CZP. It was rezoned to CAC in the 2005 Continuation of the Comprehensive Zoning Plan (CZP) process (“2005 Continuation” also known as “Comp Lite”).
- In the 2004 CZP, the Blue Stream property was zoned M-1. A portion of Parcels 15 and 558 with frontage on US 1 were zoned B-1. To the west of Port Capital Drive, Parcel D-1 was zoned CAC and Parcels 650 and 657 were zoned B-1. The Blue Stream property was rezoned to CAC with ZB1055M in May, 2006.

III. BACKGROUND INFORMATION

A. Site Description

- The irregularly shaped Property comprises 11.733 acres located on the southeast side of US 1 approximately 400 feet northeast of Montevideo Road. It has approximately 860 feet of frontage on US 1. Currently there is an ingress/egress driveway to the Site located approximately 420 feet from the southern end of the Site and a one-way exit only drive located toward the northern end of the Site.

The Property is improved with a U-shaped, one-story motel development known as the Copper Stallion Inn and restaurant. It is listed in the Howard County Historic Sites Inventory as HO-833. This development is generally concentrated in the front central portion of the site close to US 1. A swimming pool is located to the southwest of the motel building and an office building is located within an island along the US 1 frontage.

The Site is heavily wooded to the rear of the motel building. The Deep Run stream, wetlands and floodplain run along the west, south and east sides of the Property.

B. Vicinal Properties

- On the south side of US 1, Parcel 28, the 10.48 acre abutting parcel to the southwest is developed with two office/warehouse buildings approved with Site Development Plan (SDP) 87-008 in May, 1987. Parcel 535A, the 17.24 acre abutting parcel to the northeast is developed with three office/warehouse buildings approved with SDPs 87-203 (approval date not available) and 89-009 in October, 1988.
- Across US 1 to the northwest is the approximately 76 acre, CAC-CLI zoned Parcel which is the future site of the Blue Stream mixed use development.

C. Roads

- US 1 has two travel lanes in each direction and an ultimate right-of-way width of 134 feet.
- Visibility from the proposed driveway entrance appears to be acceptable, with estimated sight distance of more than 500 feet to the south and north. Precise sight distance measurements may only be determined through a detailed sight distance analysis, however.
- According to data from the State Highway Administration, the traffic volume on US 1 south of MD 103 was 26,370 AADT (average annual daily trips) as of 2007.

D. Water and Sewer Service

- The subject Property is within the Metropolitan District and is within the Comprehensive Service Area of the Howard County Water and Sewerage Master Plan.

The Property is currently served by public water and sewer facilities.

E. General Plan

- The Property is designated Employment/Redevelopment Corridor on the Policies Map 2000-2020 of the 2000 General Plan.
- US 1 is depicted as an Intermediate Arterial/Transit/HOV Corridor on the Transportation Map 2000-2020 of the 2000 General Plan.

F. Subdivision Review Committee

- As required by Section 100.G.2.c. of the Zoning Regulations, the site plan documentation included with this petition was evaluated by the Subdivision Review Committee ("SRC"). Subsequent to this evaluation, on December 11, 2008, the Department of Planning and Zoning certified that the development shown on the proposed site plan has the potential to comply with all technical requirements of the reviewing agencies, without substantial changes to the plan, in subsequent subdivision and site development plan stages of review. State Highway Administration and Division of Land Development comments are attached to this Technical Staff Report.

G. Adequate Public Facilities Ordinance

- **The petition is subject to the Adequate Public Facilities Ordinance. The required site development plan for the proposed development is subject to the requirement to pass the tests for adequate road facilities.**

IV. EVALUATIONS AND CONCLUSIONS

A. Evaluation of the Petition Concerning the Mistake Rule

- **The Petitioner alleges that the 2004 CZP rezoning of many properties with frontage on US 1 resulted in the virtual exclusion of land available for the proposed type of facility.**

The majority of land with frontage on US 1 is zoned B-1, B-2, M-1, M-2, CAC, CE or TOD. These districts do not permit nursing home or residential care facilities.

- **The Petitioner also justifies the rezoning of the Property to a zone different than its neighboring properties on the basis of the presence of surrounding environmental features. The Petitioner notes that the Property is bordered on three sides by streams, wetlands and floodplain and it is therefore distinct and separate from neighboring parcels such that the proposed rezoning is appropriate.**

As previously noted in this report, the Site is bordered on three sides by a stream, wetlands and floodplain. While these environmental features and associated buffers encumber a significant portion of the Property and preclude these areas from development potential, more importantly, the environmental constraints physically isolate the Site from abutting properties and for practical purposes, remove the potential for consolidation. The Site is therefore not ideally suited for meeting the goals of the Route 1 Manual and the CE District to consolidate and assemble parcels for development.

Additionally, the abutting properties to the north and south are developed with long standing industrial uses approved in the 1980s when the properties were zoned M-2. The uses continue under the current CE-CLI zoning. The overarching goals in the purpose statement for the CE District are that the district is intended to encourage development and redevelopment of unused or underutilized land near US 1 and that the development should provide for new office, flex, and light industrial uses while encouraging the consolidation of fragmented parcels.

Because of the Site's fragmentation resulting from its environmental features, it cannot logically be consolidated with other properties. The County Council apparently did not fully realize the impacts of these factors in rezoning the Property to CE and the Petitioner's allegation of mistake is substantiated.

B. Evaluation of the Petition Concerning the Change Rule

- **The neighborhood defined by the Petitioner is too large for the relatively small size of the Property and its relatively low significance in relation to the overall US 1 corridor.**

The neighborhood as defined by Department of Planning and Zoning is the same as the Petitioner's except that it does not extend as far to the northeast as the Petitioner's proposed Route 100 boundary.

- **The Department of Planning and Zoning does find that there is evidence of change in the character of the neighborhood. Whether this change is substantial enough to justify a rezoning to POR would need to be considered by the Zoning Board. As an example of change that occurred subsequent to the 2004 CZP, the Petitioner cites Zoning Board case No. 1055M in which the zoning for the approximately 76 acre Blue Stream property located directly across Route 1 from the subject Property was changed from B-1 and M-1 to CAC. Additionally, Zoning Board case No. 1035M is mentioned in the petition as an example demonstrating the change in the neighborhood. Howard Square (formerly Aladdin Village Mobile Home Park) is also mentioned as an example of a project representing change.**

Prior to ZB 1055M, the Blue Stream property was zoned B-1 and M-1 in the 2004 CZP. In ZB 1055M, (May, 2006) the property was rezoned on the basis of mistake for several reasons. There was evidence that the 1993 piecemeal zoning cases established a trend toward an increase in residential zoning that was not taken into account in the 2004 CZP. The B-1 and M-1 zoning placed on the property in 2004 was based on the assumption that the property was not going to be jointly developed with the adjacent Luskin's property which would provide a significant opportunity to develop a major mixed use activity center and streetscape, thereby fulfilling the goals of the General Plan, the 2004 CZP, and the Route 1 Manual. The Zoning Board did not know at the time of the 2004 CZP that the assumption that the property would be jointly developed would prove to be untrue over time. The Decision and Order in ZB 1055M stated that there was no basis of change found for the rezoning of the property and the rezoning was based only on a finding of mistake. Although the rezoning of the Blue Stream property was based on mistake, because the rezoning occurred subsequent to the 2004 CZP, it can be viewed as characterizing a change. The same principal holds for the rezoning of Howard Square which was rezoned from R-MH/B-1 to CAC with Amendment No. 43.98 in the 2005 Continuation.

In ZB 1035M, three parcels of land located on the east side of Montevideo Road approximately 1,000 feet from US 1 were rezoned from the CE-CLI zoning placed on the properties with the 2004 CZP to M-2. These parcels had been developed with and were in use as industrial developments prior to the 2004 CZP for permitted M-2 uses. The properties had been entirely zoned M-2 since 1977 and this zoning was maintained in the 1985 and 1993 Comprehensive Zoning Plans. The rezoning of the properties in ZB 1035M represented a return to the long standing M-2 zoning and was granted only on the basis of mistake. The finding of mistake in ZB 1035M does not represent a change because of the unique circumstance of returning the property to its former zoning classification and the relevance of that decision being based upon the distance of the property from US 1.

- **The Belmont Station and Mission Place projects noted by the Petitioner as examples of mixed use developments representing change are located outside of the Petitioner's and DPZ Neighborhood boundaries and are not relevant to this case.**

C. Relation to the General Plan

- **A Zoning Map Amendment to rezone the Property to POR would not be inconsistent with the Employment/Redevelopment Corridor land use designation of the General Plan for this vicinity.**
- **Incorporating the development of the Property into the neighborhood as POR would not be inconsistent with the land use designation of the General Plan, or the goals of the US 1 corridor revitalization efforts.**

D. Evaluation of Site Plan Documentation Factors in Section 100.G.2.d.

1. The proposed use on the Property is institutional in nature and the proposed DSP is considered to be in relative compliance with the factor concerning the compatibility of the proposed development with the existing and potential land uses of the surrounding areas.
2. The proposed development would be concentrated toward the front central area of the Site closest to US 1 away from the areas of the stream, wetlands and floodplain. As previously noted, some encroachments into the environmental areas are depicted on the DSP and waivers would be required for the proposed development. It appears the encroachments are limited to the buffers and do not encroach into the actual stream, wetlands or floodplain and the Petitioner is aware of the necessity to minimize the encroachments.
3. The access point would be aligned with the entrance to the Blue Stream property, and would be in nearly the same location as the existing driveway. The second existing egress point at the northern end of the Site is proposed to be removed. The development on the Proposed DSP would have access at a point that has been recommended for approval and determined to be safe by the State Highway Administration.
4. As noted above, the Proposed DSP would be reasonably compatible with the Howard County General Plan.

E. Evaluation of Site Plan Design

If the Zoning Board should find that a Zoning Map Amendment is justified on the basis of mistake and/or change, the design of the development on the proposed DSP is recommended. The proposed DSP has been determined to have the potential to comply with DPZ technical requirements subject to waiver and variance approval. If the Property is rezoned POR, the structure setback requirement would change accordingly. The setback requirement of the CE District from US 1 is 20 feet, and the setback requirement of the POR District from US 1 is 30 feet. The DSP shows the building as being setback approximately 18 feet from US 1. The DSP indicates that the Petitioner has attempted the development of the Site to conform to the Route 1 Manual and has considered the importance of the continuity of the Route 1 streetscape.

F. Evaluation of Zoning District

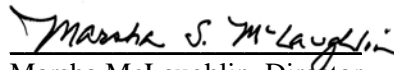
If the Zoning Board should find that a Zoning Map Amendment is justified on the basis of mistake and/or change, the requested POR District would be an appropriate district for this site because the proposed institutional use is an appropriately compatible and transitional use to the surrounding industrial and planned residential uses.

As previously noted in Section I of this Technical Staff Report, a portion of the southwest side of the Site is proposed to retain its current CE-CLI zoning classification. The Petitioner has not provided specific size information about this excluded area or justification for the exclusion from rezoning. If the Zoning Board should find that a Zoning Map Amendment is justified, the Department of Planning and Zoning would recommend the entire Property be rezoned to POR as the request would result in the split-zoning of the Property. The request seems contradictory to the reasons for the requested rezoning; if the triangular portion remains zoned CE-CLI, the implication would seem to be that there is potential for this portion to be consolidated with adjoining CE-CLI properties, which is contrary to the justification for rezoning based on the Site's environmental features.

IV. RECOMMENDATION

APPROVAL

For the reasons noted above, the Department of Planning and Zoning recommends that the requested Zoning Map Amendment with site plan documentation to rezone the Property from CE-CLI to POR be **APPROVED**.


Marsha McLaughlin, Director

12/30/08
Date

NOTE: The file is available for public review at the Department of Planning and Zoning Public Information Counter.

MM/ZLK/zlk